IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 749 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPKUMAR BHAGIRATHBHAI JAISWAL & 1 - Applicant(s)

Versus

MOHANBHAI FULABHAI PANCHAL - Opponent(s)

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Appearance :

MR DK DESAI for Applicant(s) : 1 - 2.
RULE SERVED for Opponent(s) : 1,
MR NS DESAI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 20/10/2005

ORAL JUDGMENT

1. Heard ld. Counsel Mr. DK Desai for the petitioners. The present Civil Revision Application is preferred against the order rejecting the application praying condonation of delay in preferring Regular Civil Appeal

against the judgment and decree passed in Regular Civil Suit No. 138/1992 dated 29.10.1996. The say of the petitioners is that the approach of the Court in such matter should be liberal and pragmatic and ld. Jt. District Judge, Nadiad failed in exercising jurisdiction while dealing with the application for condonation of delay caused in filing Reg. Civil Appeal, preferred under section 5 of the Limitation Act.

2. It is necessary to state in brief the basic facts which need consideration for the purpose of dealing with the present Civil Revision Application (CRA for short). The suit is of the year 1992 and came to be decided in October,1996 and thereafter, the Co.Op.Society being the decree holder filed execution petition in the year 1996. The first execution petition being Execution Petition No.84/1996 came to be disposed of on 14.07.1997 on account of some settlement that was arrived at between the parties. It was obligatory on the part of the petitioners to remove the encroached portion of the construction that has been made by the petitioners. However, as the same was not removed, the Co.Op. Society filed fresh execution petition being Execution Petition No.18/1998. Thereafter, for the first time, the petitioners approached the District Court in the year 1999 contending that they were not aware about the

judgment and decree passed earlier by the Court on 29.10.1996 and, therefore, they should be permitted to agitate the grievance against the judgment and decree passed in the original suit.

3. The ld. Appellate Judge has considered entire aspect emerging from the record as to the genuineness of the stand taken by the petitioners. The amount deposited and paid by the present petitioners under the alleged compromise was in compliance with one part of the decree passed in favour of the respondent Bank, but that has not exonerated the petitioners in discharging other obligations under the said decree.

4. Certain decisions have been cited by ld. Counsel Mr. Desai for the petitioners and they were also cited before the ld. Jt. District Judge and it is rightly observed that the ratio of the decision of the Apex Court in the case of **N. Balakrishnan v/s M. Krishnamurthy, 1998(7) SCC 209,** would not help the petitioners. The delay caused is of 883 days and such a long period of delay normally should not be condoned unless there are compelling or convincing reasons. The petitioners are supposed to satisfy the Court about the sufficiency of the cause resulting into the delay in preferring an appeal. The satisfaction recorded by the ld. Lower Court is absolutely legal and is based on sound reasons and facts

that were placed before the Court.

5. For short, there is no merits in the present CRA because there is no element of either illegality or perversity. The jurisdiction of the revisional Court is very limited and the Court is of the view that the impugned order does not require any interference in exercise of powers under section 115 of CPC. Hence, CRA is hereby dismissed. Rule is discharged. Interim Relief, if any, stands vacated. No costs.

(C.K. BUCH, J)

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